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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,314	05/21/2001	Joon Young Yoon	0255-0003	6556
7590 11/14/2003 TransPotomac Plaza 1033 North Fairfax Street Suite 306 Alexandria, VA 22314			EXAMINER SALVATORE, LYNDIA	
			ART UNIT	PAPER NUMBER

1771

DATE MAILED: 11/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/856,314

Applicant(s)

YOON ET AL.

Examiner

Lynda M Salvatore

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendments and accompanying remarks dated August 1st, 2003 have been carefully considered and entered. Claims 1-9 have been amended as requested. Applicant's substitute specification is found sufficient to obviate the objection set forth in section 1 of the last Office Action. Thus, this objection is withdrawn. Applicant's amendments to claims 1-9 are found sufficient to overcome the under 35 U.S.C. 112, second paragraph rejections set forth in sections 7-10 of the last Office Action. Thus, these indefinite rejections are withdrawn. Despite this advance however, Applicant's amendments are not found to patently distinguish the claims over the prior art of record and Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

Specification

2. The disclosure is objected to because of the following informalities: Priority claims to related data are only required when the related data is domestic. As such, it is not necessary for the Applicant to recite foreign priority claims. The Examiner suggests deleting the priority claim related data from the disclosure.

Claim Rejections - 35 USC § 112, 1st paragraph

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claim 1 stands rejected and claim 8 is currently rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a

way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant amended claim 1 to recite “consisting of” three layers and claim 8 to recite comprising and further included the limitation of passing the warp knit through a hot air dryer. Applicant asserts that the specification is abundantly clear with regard to construction of the three layer warp knit and further asserts that one of skill in the art would be reasonably apprised of the use of a three-bar knitting machine to make a three-layered knit fabric. These arguments are not found persuasive on the grounds that the point is not what the three layers are formed from, but *how* the “layers” or yarns are structurally related. It is also the position of the Examiner that the Applicant’s use of the term “layer” is contrary to the accepted meaning in general, and in knit art, in particular. Specifically, in the knitting art, “layers” implies a fabric such as a double knit having two layers of fabric interknitted together or a knit spacer fabric. However, it does not appear that Applicant’s invention encompasses these types of fabrics. With regard to the use of a three bar knitting machine to make a three layered knit fabric, the Examiner asserts that a three bar knitting machine does not produce the Applicant’s three layer knit fabric. A three bar knitting machine is known to produce a single layer knit fabric having distinct technical and rear faces. Additionally, it is also known to insert yarns within said single layer knit. However, assuming that the three bar knitting machine suggested by the Applicant did produce a three layer knit fabric, the Examiner would like to point out that the specification does not enable the use of such an apparatus to make a three layered knit fabric. It can only be assumed by the Examiner that perhaps the Applicant is claiming the product of a three bar knitting machine having three different yarns, but nowhere in the specification is this product enabled for a three bar knitting

machine. Additionally, claims 2-7 and 9 are further rejected for their dependency on claims 1 and 8.

Claim Rejections - 35 USC § 112, 2nd paragraph

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claim 1 stands rejected and claim 8 is currently rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Additionally, claims 2-7 and 9 are further rejected for their dependency on claims 1 and 8.

Specifically, claims 1 and 8 are indefinite for reasons set forth above in section 3 and Applicant has not amended claims 1 and 8 such that the claimed subject matter is consistent with the accepted meaning of a warp knit. For purposes of examination these claims will be interpreted as a warp knit comprising ultra fine, elastic, and synthetic, or high shrinkage yarns in any structural combination.

Claim Rejections - 35 USC § 102/103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claims 1,2,4, and 6 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Scholz et al., US 5,512,354 as set forth in section 12 of the last Office Action.

Applicant argues that Scholz et al., invention differs from the instantly claimed three-layered knit fabric, however, due to the outstanding and significant 112 1st and 2nd paragraph

issues, the Examiner maintains that the patent issued to Scholz et al., teaches a knit fabric construction comprising a non-fiberglass micro-denier yarn in combination with a heat shrinkable yarn or a stretch yarn, and alternatively a stiffness controlling yarn, which presently meets the Examiners interpretation of a warp knit having an ultra fine yarn, a spandex elastic yarn, and synthetic yarn. Without sufficient enablement and/or definiteness, it is unclear how the present invention differs from the prior art product. The burden is shifted upon the Applicant to evidence how a three layered warp knit fabric is constructed.

Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 3 and 7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Scholz et al., US 5,512,354 as set forth in sections 14 and 15 of the last Office Action.

Applicant asserts that since claim 1, from which claims 3 and 7 depends from, is patentable over the patent issued to Scholz et al., these rejections are moot. This is not persuasive since, the Examiner maintains the rejection of claim 1 above and Applicant has not provided any new arguments to consider.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 703-305-4070. The examiner can normally be reached on M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

October 29, 2003

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CHERYL A. JUSKA
PRIMARY EXAMINER